

HOUSE BILL No. 1007

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-28; IC 6-3-2-2; IC 6-3.1.

Synopsis: Various business tax changes. Increases, over four years, for purposes of the adjusted gross income tax, the sales factor used to apportion business income. Eliminates the property factor and payroll factor that are also used in apportioning income for taxable years beginning after December 31, 2010. Establishes the small business innovation and technology grant program to provide grants of up to \$15,000 from the twenty-first century research and technology fund to small businesses that apply for federal small business innovation research and technology transfer grants. Provides that the economic development corporation administers the program. Makes an appropriation. Provides that a person entitled to claim a state tax liability credit may transfer all or part of the right to claim the state tax liability credit to another person. Eliminates existing restrictions on the right to assign certain state tax liability credits. Provides, with respect to certain tax credits, that for a pass through entity that is treated as an S corporation for federal income tax purposes, a shareholder's share of a tax credit is determined in the manner provided for determining an S corporation shareholder's share of credits under the Internal Revenue Code. Provides, with respect to certain tax credits, that for a pass through entity that is treated as a partnership for federal income tax purposes, a partner's or member's share of a tax credit is determined in the manner provided for determining a partner's share of credits under the Internal Revenue Code. Deletes the January 1, 2008, deadline for a purchase of motion picture or audio production equipment to be eligible as a qualified investment for purposes of the Hoosier business investment tax credit (HBITC). Extends by five years (from December

(Continued next page)

Effective: July 1, 2006; January 1, 2007.

Harris T

January 10, 2006, read first time and referred to Committee on Ways and Means.



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31, 2007, to December 31, 2012) the date by which a qualified investment must be made in order to be eligible for the HBITC. Provides for automatic extensions of that date in five year increments unless the general assembly enacts a law that terminates the automatic extensions.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1007

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-28 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]:

4 **Chapter 28. Small Business Innovation and Technology Grant**
5 **Program**

6 **Sec. 1. As used in this chapter, "program" refers to the small**
7 **business innovation and technology grant program established**
8 **under section 5 of this chapter.**

9 **Sec. 2. As used in this chapter, "SBIR" refers to the small**
10 **business innovation research program administered by the federal**
11 **Small Business Administration.**

12 **Sec. 3. As used in this chapter, "small business" has the meaning**
13 **set forth in IC 5-22-14-1.**

14 **Sec. 4. As used in this chapter, "STTR" refers to the small**
15 **business technology transfer program administered by the federal**



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1 **Small Business Administration.**

2 **Sec. 5. (a) The corporation shall establish a program known as**
 3 **the small business innovation and technology grant program.**

4 **(b) The purpose of the program is to provide grants to small**
 5 **businesses to assist the small businesses in applying for SBIR or**
 6 **STTR grants.**

7 **(c) The corporation shall administer the program.**

8 **Sec. 6. (a) To be eligible for selection to receive a grant under**
 9 **the program, a small business must:**

10 **(1) apply for an SBIR or STTR grant;**

11 **(2) have all or substantially all of its employees and**
 12 **operations, including operations that are the subject of the**
 13 **SBIR or STTR grant application, located in Indiana when the**
 14 **small business applies for a grant under this chapter;**

15 **(3) conduct all, or substantially all, of its research for its**
 16 **proposed SBIR or STTR project in Indiana;**

17 **(4) submit an application on a form provided by the**
 18 **corporation; and**

19 **(5) comply with any other requirements set forth by the**
 20 **corporation.**

21 **(b) Subject to section 7 of this chapter, after review of the**
 22 **applications submitted by small businesses under this section, the**
 23 **corporation shall do the following:**

24 **(1) Select the small businesses that will participate in the**
 25 **program.**

26 **(2) Provide grants to the small businesses selected to**
 27 **participate in the program.**

28 **(c) An application submitted under this section is not subject to**
 29 **IC 5-28-16.**

30 **Sec. 7. The corporation shall consider the following criteria in**
 31 **selecting a small business to receive a grant under section 6 of this**
 32 **chapter:**

33 **(1) Importance to Indiana's future of the research that is the**
 34 **subject of the SBIR or STTR grant application of the small**
 35 **business.**

36 **(2) Potential job creation through the research that is the**
 37 **subject of the SBIR or STTR grant application of the small**
 38 **business.**

39 **(3) Overall positive economic impact on Indiana of the small**
 40 **business and its research.**

41 **(4) Likelihood of the commercial success of the small business,**
 42 **including the commercial success of the research that is the**

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1 subject of the SBIR or STTR grant application of the small
2 business.

3 Sec. 8. A grant awarded under section 6 of this chapter may not
4 exceed the lesser of:

- 5 (1) fifty percent (50%) of the costs incurred or to be incurred
6 by the small business in applying for an SBIR or STTR grant;
7 or
8 (2) fifteen thousand dollars (\$15,000).

9 Sec. 9. A small business that is selected to receive a grant under
10 section 6 of this chapter must do the following:

- 11 (1) Use the grant to defray the costs of applying for an SBIR
12 or STTR grant.
13 (2) Report to the corporation whether the small business was
14 awarded an SBIR or STTR grant and the amount of the SBIR
15 or STTR grant, if applicable.

16 Sec. 10. The total of all grants awarded under this chapter in a
17 state fiscal year may not exceed one million five hundred thousand
18 dollars (\$1,500,000).

19 Sec. 11. There is annually appropriated to the corporation from
20 the Indiana twenty-first century research and technology fund
21 established by IC 5-28-16-2 the amount necessary to carry out this
22 chapter.

23 Sec. 12. The corporation shall adopt rules under IC 4-22-2 to
24 implement this chapter.

25 SECTION 2. IC 6-3-2-2 IS AMENDED TO READ AS FOLLOWS
26 [EFFECTIVE JANUARY 1, 2007]: Sec. 2. (a) With regard to
27 corporations and nonresident persons, "adjusted gross income derived
28 from sources within Indiana", for the purposes of this article, shall
29 mean and include:

- 30 (1) income from real or tangible personal property located in this
31 state;
32 (2) income from doing business in this state;
33 (3) income from a trade or profession conducted in this state;
34 (4) compensation for labor or services rendered within this state;
35 and
36 (5) income from stocks, bonds, notes, bank deposits, patents,
37 copyrights, secret processes and formulas, good will, trademarks,
38 trade brands, franchises, and other intangible personal property if
39 the receipt from the intangible is attributable to Indiana under
40 section 2.2 of this chapter.

41 In the case of nonbusiness income described in subsection (g), only so
42 much of such income as is allocated to this state under the provisions

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of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, ~~then~~ the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a ~~fraction~~ the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows: **the following:**

(1) For all taxable years that begin ~~within the first calendar year immediately following the period,~~ **after December 31, 2006, and before January 1, 2008, a fraction. The:**

(A) numerator of the fraction is the sum of the property factor plus the payroll factor plus ~~one hundred thirty-three percent (133%)~~ **the product of the sales factor multiplied by three (3);** and the

(B) denominator of the fraction is ~~three and thirty-three hundredths (3.33);~~ **five (5).**

(2) For all taxable years that begin ~~within the second calendar year following the period,~~ **after December 31, 2007, and before January 1, 2009, a fraction. The:**

(A) numerator of the fraction is the property factor plus the payroll factor plus ~~one hundred sixty-seven percent (167%)~~ **the product of the sales factor multiplied by four and sixty-seven hundredths (4.67);** and the

(B) denominator of the fraction is ~~three six and sixty-seven hundredths (3.67);~~ **(6.67).**

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(3) For all taxable years beginning ~~on or after January 1 of the third calendar year following the period;~~ **December 31, 2008, and before January 1, 2010, a fraction. The:**

(A) numerator of the fraction is the property factor plus the payroll factor plus ~~two hundred percent (200%)~~ **the product of the sales factor multiplied by eight (8); and the**

(B) denominator of the fraction is ~~four (4);~~ **ten (10).**

(4) **For all taxable years beginning after December 31, 2009, and before January 1, 2011, a fraction. The:**

(A) **numerator of the fraction is the property factor plus the payroll factor plus the product of the sales factor multiplied by eighteen (18); and**

(B) **denominator of the fraction is twenty (20).**

(5) **For all taxable years beginning after December 31, 2010, the sales factor.**

For purposes of this subsection, income growth occurs when the state's nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may

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require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

(1) the individual's service is performed entirely within the state;

(2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or

(3) some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for

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purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

- (1) the income-producing activity is performed in this state; or
- (2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

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(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

(i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or

(ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(1) separate accounting;

(2) **for a taxable year beginning before January 1, 2011**, the exclusion of any one (1) or more of the factors, **except the sales factor**;

(3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or

(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

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(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

(1) a foreign corporation; or

(2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

(1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and

(2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the

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corporation's annual statement filed with the department of insurance.

SECTION 3. IC 6-3.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]:

Chapter 1.5. Transfers of State Tax Liability Credits

Sec. 1. This chapter does not apply to a pass through entity that distributes shares of a state tax liability credit to shareholders, partners, or members of the pass through entity.

Sec. 2. As used in this chapter, "credit originator" means, with respect to any given state tax liability credit, a person who:

(1) at some time is, or was, entitled to the state tax liability credit; and

(2) did not acquire the right to claim the state tax liability credit by a transfer authorized under section 5 of this chapter.

Sec. 3. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 4. As used in this chapter, "state tax liability credit" means a credit against any listed tax (as defined in IC 6-8.1-1-1) provided by IC 6-3 or this article.

Sec. 5. (a) Except as otherwise provided in this section, a person who is entitled to claim a state tax liability credit may transfer all or part of the right to another person.

(b) Regardless of the time or manner in which a state tax liability credit is acquired, the right to claim a state tax liability credit remains subject to:

(1) Indiana law;

(2) administrative rules adopted by the department;

(3) administrative determinations of the department;

(4) administrative orders issued by the department; and

(5) decisions of Indiana courts and courts of the United States.

(c) The right to claim all or part of a state tax liability credit may only be transferred by a written instrument.

Sec. 6. (a) The department shall establish a system for generating unique credit transfer tracking numbers.

(b) The system established under subsection (a) must be accessible to the public on the computer gateway administered by the office of technology established by IC 4-13.1-2-1.

Sec. 7. A person must furnish the following information in order

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to obtain a credit transfer tracking number from the department:

- (1) The name of the transferor.
- (2) The name of the transferee.
- (3) The credit transfer tracking number of the transfer in which the transferor acquired the right to the claim the state liability tax credit, unless the transferor is the credit originator.
- (4) The type of state tax liability credit involved.
- (5) The amount of the state tax liability credit transferred.

Sec. 8. A transfer of any part of a state tax liability credit is not valid unless the written instrument of transfer includes the following:

- (1) The name of the transferor.
- (2) The name of the transferee.
- (3) The credit transfer tracking number of the transfer in which the transferor acquired the right to the claim the state tax liability credit, unless the transferor is the credit originator.
- (4) The type of state tax liability credit involved.
- (5) The amount of the state tax liability credit transferred.

Sec. 9. A person who acquires a right to claim a state tax liability credit by means of a transfer must claim the credit on the person's annual state tax return or returns in the manner prescribed by the department. Unless a person claiming the state tax liability credit is the credit originator, the person must submit the following information to the department with the person's annual state tax return or returns regarding the transfer in which the state tax liability credit was acquired:

- (1) The name of the transferor.
- (2) The credit transfer tracking number assigned by the department to the transfer.
- (3) The type of the state tax liability credit involved.
- (4) The amount of the state tax liability credit acquired from the transferor.

Sec. 10. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 4. IC 6-3.1-4-7, AS AMENDED BY P.L.193-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 7. (a) If a pass through entity does not have state income tax liability against which the research expense tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the** research expense tax credit. ~~equal to:~~

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- (1) the research expense tax credit determined for the pass through entity for the taxable year; multiplied by
 (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's research expense tax credit shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's research expense credit shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

(b) The credit provided under subsection (a) is in addition to a research expense tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim a credit under this chapter for the same qualified research expenses.

SECTION 5. IC 6-3.1-11-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 7.5. As used in this chapter, "pass through entity" means:**

- (1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) a partnership;
- (3) a limited liability company; or
- (4) a limited liability partnership.

SECTION 6. IC 6-3.1-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 13. As used in this chapter, "taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has any state tax liability and that is the owner or developer of an industrial recovery site. ~~The term includes a lessee that is assigned some part of a credit under section 16(c) of this chapter.~~**

SECTION 7. IC 6-3.1-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 16. (a) Subject to section 21 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that year.**

(b) The amount of the credit to which a taxpayer is entitled is the qualified investment made by the taxpayer during the taxable year

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multiplied by the applicable percentage.

(c) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to a lessee of the industrial recovery site. A credit that is assigned under this subsection remains subject to this chapter.

(d) An assignment under subsection (c) must be in writing and both the taxpayer and the lessee must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department of revenue. The taxpayer shall not receive value in connection with the assignment under subsection (c) that exceeds the value of the part of the credit assigned.

SECTION 8. IC 6-3.1-11-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 24. (a) If a pass through entity does not have state income tax liability against which the credit provided by this chapter may be applied, a shareholder, partner, or member of the pass through entity is entitled to a share of the credit provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.**

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same investment.

SECTION 9. IC 6-3.1-11.5-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 15. As used in this chapter, "taxpayer" means an individual, corporation, limited liability company, partnership, or other entity that has any state tax liability and that is the owner or developer of a military base recovery site. The term includes a lessee that is assigned some part of a credit under section 18(c) of this chapter.**

SECTION 10. IC 6-3.1-11.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: **Sec. 18. (a) Subject to**

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section 23 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

(b) The amount of the credit to which a taxpayer is entitled is the qualified investment made by the taxpayer during the taxable year multiplied by the applicable percentage.

(c) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to a lessee of the military base recovery site. A credit that is assigned under this subsection remains subject to this chapter.

(d) An assignment under subsection (c) must be in writing and both the taxpayer and the lessee must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department of state revenue. The taxpayer shall not receive value in connection with the assignment under subsection (c) that exceeds the value of the part of the credit assigned.

SECTION 11. IC 6-3.1-11.5-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 26. (a) If a pass through entity is entitled to a credit ~~under provided by~~ this chapter but does not have state tax liability against which the credit may be applied, ~~an individual who is a shareholder, partner, or member of the~~ pass through entity is entitled to a **share of the** credit ~~equal to:~~

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributable income to which the individual is entitled.

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is ~~in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is~~ otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not

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claim more than one (1) credit for the same investment.

SECTION 12. IC 6-3.1-13-21, AS AMENDED BY P.L.197-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 21. (a) If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a **share of the tax credit equal to:**

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled:

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder or partner of a pass through entity is otherwise entitled under a separate agreement under this chapter. A pass through entity and a shareholder or partner of the pass through entity may not claim more than one (1) credit under the same agreement.

(c) Subsection (d) applies:

(1) only to a pass through entity that is a limited liability company or a limited liability partnership owned wholly or in part by an electric cooperative incorporated under IC 8-1-13; and

(2) if, at the request of the pass through entity, the corporation finds that the amount of the average wage to be paid by the pass through entity will be at least double the average wage paid:

(A) in the county in which the project will be located, in the case of an application submitted before January 1, 2006; or

(B) in the case of an application submitted after December 31, 2005:

(i) to all employees working in the same NAICS industry sector to which the applicant's business belongs in the county in which the applicant's business is located, if there is more than one (1) business in that NAICS industry sector

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1 in the county in which the applicant's business is located;
 2 (ii) to all employees working in the same NAICS industry
 3 sector to which the applicant's business belongs in Indiana,
 4 if the applicant's business is the only business in that NAICS
 5 industry sector in the county in which the applicant's
 6 business is located but there is more than one (1) business in
 7 that NAICS industry sector in Indiana; or
 8 (iii) to all employees working in the same county as the
 9 county in which the applicant's business is located, if there
 10 is no other business in Indiana in the same NAICS industry
 11 sector to which the applicant's business belongs.

12 (d) The corporation may determine that:

- 13 (1) a credit shall be claimed by the pass through entity described
 14 in subsection (c); and
 15 (2) if the credit exceeds the pass through entity's state income tax
 16 liability for the taxable year, the excess shall be refunded to the
 17 pass through entity.

18 If the corporation grants a refund directly to a pass through entity under
 19 this subsection, the pass through entity shall claim the refund on forms
 20 prescribed by the department of state revenue.

21 SECTION 13. IC 6-3.1-13.5-8 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 8. (a) If a pass
 23 through entity does not have state income tax liability against which the
 24 tax credit provided by this chapter may be applied, a shareholder, ~~or~~
 25 partner, **or member** of the pass through entity is entitled to a **share of**
 26 **the tax credit equal to:**

- 27 (1) ~~the tax credit determined for the pass through entity for the~~
 28 ~~taxable year; multiplied by~~
 29 (2) ~~the percentage of the pass through entity's distributive income~~
 30 ~~to which the shareholder or partner is entitled;~~

31 **provided by this chapter. If the pass through entity is treated as an**
 32 **S corporation for federal income tax purposes, a shareholder's**
 33 **share of the credit provided by this chapter shall be determined in**
 34 **the manner provided for determining the shareholder's share of**
 35 **credits under Section 1366 of the Internal Revenue Code. If the**
 36 **pass through entity is treated as a partnership for federal income**
 37 **tax purposes, a partner's or member's share of the credit provided**
 38 **by this chapter shall be determined in the manner provided for**
 39 **determining the partner's or member's share of credits under**
 40 **Section 704 of the Internal Revenue Code.**

41 (b) The credit provided under subsection (a) is in addition to a tax
 42 credit to which a shareholder or partner of a pass through entity is

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otherwise entitled under this chapter.

SECTION 14. IC 6-3.1-19-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 3. (a) Subject to section 5 of this chapter, a taxpayer is entitled to a credit against the taxpayer's state and local tax liability for a taxable year if the taxpayer makes a qualified investment in that year.

(b) The amount of the credit to which a taxpayer is entitled is the qualified investment made by the taxpayer during the taxable year multiplied by twenty-five percent (25%).

(c) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to a lessee of property redeveloped or rehabilitated under section 2 of this chapter. A credit that is assigned under this subsection remains subject to this chapter.

(d) An assignment under subsection (c) must be in writing and both the taxpayer and the lessee must report the assignment on their state tax return for the year in which the assignment is made, in the manner prescribed by the department. The taxpayer may not receive value in connection with the assignment under subsection (c) that exceeds the value of the part of the credit assigned.

(e) (c) If a pass through entity is entitled to a credit under this chapter but does not have state and local tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the tax credit equal to:**

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled:

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code. The credit provided under this subsection is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and an individual who is a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same investment.

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(d) A taxpayer that is otherwise entitled to a credit under this chapter for a taxable year may claim the credit regardless of whether any income tax incremental amount or gross retail incremental amount has been:

- (1) deposited in the incremental tax financing fund established for the community revitalization enhancement district; or
- (2) allocated to the district.

SECTION 15. IC 6-3.1-22.2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 7. If a pass through entity is entitled to a credit under section 5 of this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the tax credit equal to:**

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled:

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

SECTION 16. IC 6-3.1-23-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 14. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, a partner, or a member of the pass through entity is entitled to a **share of the tax credit equal to:**

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled:

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the tax credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the

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pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the tax credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

SECTION 17. IC 6-3.1-24-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 11. If a pass through entity is entitled to a credit ~~under section 6 of~~ **provided by** this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the** tax credit ~~equal to:~~

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled;

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

SECTION 18. IC 6-3.1-25.2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 6. (a) If a manufacturer that claims a credit under this chapter is a pass through entity (as defined in IC 6-3.1-11.5-8.5) that does not have state tax liability for a taxable year against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the** credit ~~equal to:~~

(1) the credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled;

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provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

(b) If the amount determined under subsection (a) exceeds the state tax liability of the shareholder, partner, or member, the shareholder, partner, or member may not carry over the excess to following taxable years.

SECTION 19. IC 6-3.1-26-8, AS AMENDED BY P.L.199-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures in Indiana for:

- (1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution equipment;
- (2) the purchase of new computers and related equipment;
- (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution facilities;
- (6) costs associated with retooling existing machinery and equipment;
- (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry; and
- (8) costs associated with the purchase ~~before January 1, 2008~~, of machinery, equipment, or special purpose buildings used to make motion pictures or audio productions;

that are certified by the corporation under this chapter as being eligible

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for the credit under this chapter.

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 20. IC 6-3.1-26-16, AS AMENDED BY P.L.199-2005, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 16. If a pass through entity does not have state tax liability against which the tax credit **provided by this chapter** may be applied, a shareholder or partner of the pass through entity is entitled to a **share of the tax credit equal to:**

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

SECTION 21. IC 6-3.1-26-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 26. (a) This chapter applies to taxable years beginning after December 31, 2003.

(b) Notwithstanding the other provisions of this chapter, ~~a taxpayer is not entitled to the corporation may not approve~~ a credit for a qualified investment made after ~~December 31, 2007. However, the approval deadline, which is determined in the following manner:~~

(1) The initial approval deadline is December 31, 2012.

(2) Subject to subdivision (3), the initial approval deadline and subsequent approval deadlines are automatically extended in increments of five (5) years, so that approval deadlines after the initial approval deadline fall on December 31, 2017, and December 31 of each fifth year thereafter.

(3) At least one (1) year before the date of an approval deadline determined under subdivision (2), the general assembly may enact a law that:

(A) terminates the automatic extension of approval deadlines under subdivision (2); and

(B) specifically designates a particular date as the final

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approval deadline.

(c) This section may not be construed to prevent a taxpayer from carrying an unused tax credit attributable to a qualified investment made before ~~January 1, 2008~~, **an approval deadline determined under subsection (b)** forward to a taxable year beginning after ~~December 31, 2007~~, **that approval deadline** in the manner provided by section 15 of this chapter.

SECTION 22. IC 6-3.1-27-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 11. If a pass through entity is entitled to a credit ~~under provided~~ **by this chapter** but does not have state tax liability against which the tax credit **provided by this chapter** may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the** tax credit ~~equal to:~~

(1) ~~the tax credit determined for the pass through entity for the taxable year; multiplied by~~

(2) ~~the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled:~~

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

SECTION 23. IC 6-3.1-27-12, AS AMENDED BY P.L.191-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 12. (a) If the amount of the credit determined under this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry over the excess to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A credit may not be carried forward for more than six (6) taxable years following the taxable year in which the taxpayer was first entitled to claim the credit.

(b) A taxpayer is not entitled to a carryback or refund of any unused credit. ~~A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this chapter.~~

SECTION 24. IC 6-3.1-28-8 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 8. If a pass through entity is entitled to a credit ~~under~~ **provided by** this chapter but does not have state tax liability against which the tax credit **provided by this chapter** may be applied, a shareholder, partner, or member of the pass through entity is entitled to a **share of the** tax credit ~~equal to:~~

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled:

provided by this chapter. If the pass through entity is treated as an S corporation for federal income tax purposes, a shareholder's share of the credit provided by this chapter shall be determined in the manner provided for determining the shareholder's share of credits under Section 1366 of the Internal Revenue Code. If the pass through entity is treated as a partnership for federal income tax purposes, a partner's or member's share of the credit provided by this chapter shall be determined in the manner provided for determining the partner's or member's share of credits under Section 704 of the Internal Revenue Code.

SECTION 25. [EFFECTIVE JANUARY 1, 2007] (a) The following statutes, all as amended by this act, apply only to taxable years beginning after December 31, 2006:

- (1) IC 6-3-2-2.
- (2) IC 6-3.1-4-7.
- (3) IC 6-3.1-11-13.
- (4) IC 6-3.1-11-16.
- (5) IC 6-3.1-11.5-15.
- (6) IC 6-3.1-11.5-18.
- (7) IC 6-3.1-11.5-26.
- (8) IC 6-3.1-13-21.
- (9) IC 6-3.1-13.5-8.
- (10) IC 6-3.1-19-3.
- (11) IC 6-3.1-22.2-7.
- (12) IC 6-3.1-23-14.
- (13) IC 6-3.1-24-11.
- (14) IC 6-3.1-25.2-6.
- (15) IC 6-3.1-26-16.
- (16) IC 6-3.1-27-11.
- (17) IC 6-3.1-27-12.
- (18) IC 6-3.1-28-8.

(b) The following statutes, all as added by this act, apply only to taxable years beginning after December 31, 2006:

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- 1 (1) IC 6-3.1-11-7.5.
- 2 (2) IC 6-3.1-11-24.
- 3 (3) IC 6-3.1-1.5.

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